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9 Attorneys for Plaintiff
10 BLUE SPIKE LLC

11 **IN THE UNITED STATES DISTRICT COURT**
12 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

13
14 BLUE SPIKE LLC,

15 Plaintiff,

16 v.
17

18 SOUNDCLOUD LIMITED,

19 Defendant.
20

Civil Case No.: 2:18-cv-05391

**ORIGINAL COMPLAINT
FOR PATENT
INFRINGEMENT**

JURY TRIAL DEMANDED

1
2 Plaintiff Blue Spike LLC (“Blue Spike” or “Plaintiff”) files this complaint against
3 the above-named Defendant (“SoundCloud”), alleging 3 counts of infringement of the
4 following 3 Patents-in-Suit:
5

6 1. U.S. Patent 7,159,116 B2, titled “Systems, methods and devices for
7 trusted transactions” (the ’116 Patent).

8 2. U.S. Patent 8,538,011 B2, titled “Systems, methods and devices for
9 trusted transactions” (the ’011 Patent).

10 3. U.S. Patent 7,813,506 B2, titled “System and methods for permitting
11 open access to data objects and for securing data within the data objects” (the ’506
12 Patent).

13 *See Exhibits 2–4.*

14 **NATURE OF THE SUIT**

15 1. This is a claim for patent infringement arising under the patent laws of the
16 United States, Title 35 of the United States Code.
17

18 **PARTIES**

19
20 2. Plaintiff Blue Spike LLC is a Texas limited liability company and has its
21 headquarters and principal place of business at 1820 Shiloh Road, Suite 1201-C,
22 Tyler, Texas 75703. Blue Spike LLC is the assignee of the exclusive license of the
23 Patents-in-Suit, and has ownership of all substantial rights in the Patents-in-Suit,
24 including the rights to grant sublicenses, to exclude others from using it, and to sue
25 and obtain damages and other relief for past and future acts of patent infringement.
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3. On information and belief, Defendant SoundCloud Limited is a company organized under the laws of Germany, with its principal place of business at Rheinsberger Str. 76/77, 10115 Berlin, Germany. Defendant can be served through its general manager and wholly-owned subsidiary, SoundCloud Inc. *See* California Code of Civil Procedure Section 416.10(b); *Falco v. Nissan N. Am. Inc.*, 987 F. Supp. 2d 1071, 1075–76 (C.D. Cal. 2013). On information and belief, SoundCloud Inc. is a corporation established under the laws of the State of Delaware, with its place of business at 510 Treat Avenue, San Francisco, California 94110. SoundCloud Inc. and SoundCloud Limited can be served through its registered agent, The Corporation Trust Company, located at National Registered Agents, Inc., 818 West Seventh Street, Suite 930, Los Angeles, California 90017.

JURISDICTION AND VENUE

4. This lawsuit is a civil action for patent infringement arising under the patent laws of the United States, 35 U.S.C. § 101 *et seq.* The Court has subject-matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1332, 1338(a), and 1367.

5. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b)-(c) and 1400(b) because Defendant has a regular and established place of business in this District. *See*, 28 U.S.C § 1400(b); *TC Heartland LLC v. Kraft Foods Group Brands LLC*, 137 S. Ct. 1514, 1521 (2017); *In re Cray Inc.*, 871 F.3d 1355, 1360–4 (Fed. Cir. 2017). Foreign corporations that do not reside in the United States are subject to suit under 28 U.S.C § 1391(c)(3) in any judicial district.

1 6. The Court has personal jurisdiction over Defendant for the following:
2 (1) Defendant has committed acts of patent infringement and contributed to and
3 induced acts of patent infringement by others in this District; (2) Defendant regularly
4 does business or solicits business in this District; (3) Defendant engages in other
5 persistent courses of conduct and derives substantial revenue by its offering of
6 infringing products and services and providing infringing products and services in
7 this District; and (4) Defendant has purposefully established substantial, systematic,
8 and continuous contacts with this District and should reasonably expect to be haled
9 into court here by its offering of infringing products and services and providing
10 infringing products and services in this District.
11

12 **FACTUAL BACKGROUND**

13
14
15 7. Protection of intellectual property is a prime concern for creators and
16 publishers of digitized copies of copyrightable works, such as musical recordings,
17 movies, video games, and computer software. Blue Spike founder Scott Moskowitz
18 pioneered—and continues to invent—technology that makes such protection
19 possible.
20
21

22 8. Blue Spike is a company focused on innovation with research and development.
23 Blue Spike does not make a service that competes directly with Defendant, but Blue
24 Spike has licensed its pioneering patents to competitors of Defendant.
25

26 9. Blue Spike is a practicing entity, just not in the same field as Defendant. For
27 instance, Blue Spike provides pre-release tracking technology for audio, like new
28

1 music artists' singles, that may be sent to various radio stations for promotional
2 purposes. This type of tracking helps an artist know whether a radio station
3 improperly posts the song for sale rather than simply playing it as a "demo only."
4 Blue Spike also has other service offerings at bluesspike.com.

5
6 10. Moskowitz is a senior member of the Institute of Electrical and Electronics
7 Engineers (IEEE), a member of the Association for Computing Machinery, and the
8 International Society for Optics and Photonics (SPIE). As a senior member of the
9 IEEE, Moskowitz has peer-reviewed numerous conference papers and has submitted
10 his own publications.
11

12
13 11. Moskowitz is an inventor on more than 110 patents, including forensic
14 watermarking, signal abstracts, data security, software watermarks, service license
15 keys, deep packet inspection, license code for authorized software and bandwidth
16 securitization.
17

18 12. The National Security Agency (NSA) even took interest in his work after he
19 filed one of his early patent applications. The NSA marked the application "classified"
20 under a "secrecy order" while it investigated his pioneering innovations and their
21 impact on national security.
22

23
24 13. As an industry trailblazer, Moskowitz has been a public figure and an active
25 author on technologies related to protecting and identifying software and multimedia
26 content. A 1995 *New York Times* article—titled "TECHNOLOGY: DIGITAL
27 COMMERCE; 2 plans for watermarks, which can bind proof of authorship to
28

1 electronic works”—recognized Moskowitz’s company as one of two leading software
2 start-ups in this newly created field. *Forbes* also interviewed Moskowitz as an expert
3 for “Cops Versus Robbers in Cyberspace,” a September 9, 1996 article about the
4 emergence of digital watermarking and rights-management technology. He has also
5 testified before the Library of Congress regarding the Digital Millennium Copyright
6 Act.
7
8

9 14. Moskowitz has spoken to the RSA Data Security Conference, the International
10 Financial Cryptography Association, Digital Distribution of the Music Industry, and
11 many other organizations about the business opportunities that digital watermarking
12 creates. Moskowitz also authored *So This Is Convergence?*, the first book of its kind
13 about secure digital-content management. This book has been downloaded over a
14 million times online and has sold thousands of copies in Japan, where Shogakukan
15 published it under the name *Denshi Skashi*, literally “electronic watermark.”
16
17 Moskowitz was asked to author the introduction to *Multimedia Security Technologies*
18 *for Digital Rights Management*, a 2006 book explaining digital-rights management.
19
20 Moskowitz authored a paper for the 2002 International Symposium on Information
21 Technology, titled “What is Acceptable Quality in the Application of Digital
22 Watermarking: Trade-offs of Security, Robustness and Quality.” He also wrote an
23 invited 2003 article titled “Bandwidth as Currency” for the *IEEE Journal*, among
24 other publications.
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15. Moskowitz and Blue Spike continue to invent technologies that protect intellectual property from unintended use or unauthorized copying.

THE ACCUSED PRODUCTS AND SERVICES

16. Defendant makes, uses, offers for sale and sells in the U.S. products, systems, and/or services that infringe the Patents-in-Suit, including, but not limited to, SoundCloud Music Services (“Accused Products and Services”).

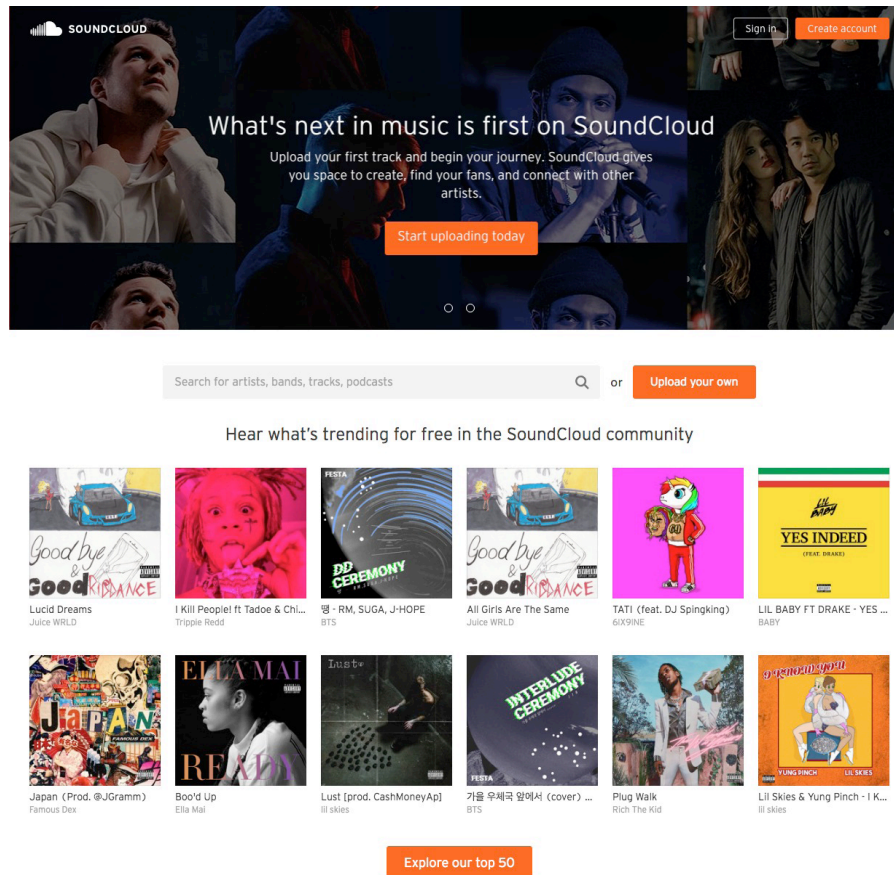


Figure 1 – Screen shot of Defendant offering of Accused Products and Services on SoundCloud webpage, as viewed at <https://www.soundcloud.com>, see Exhibit 1.

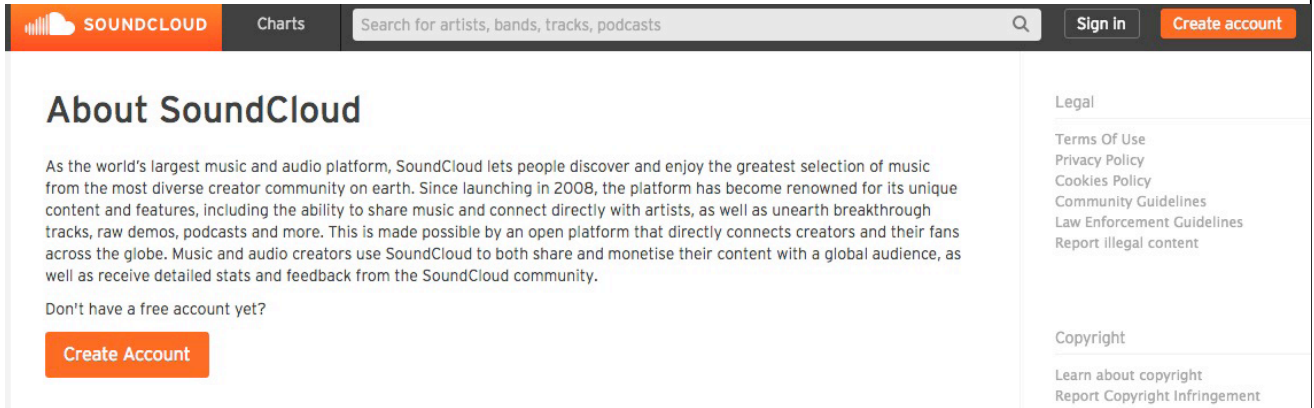


Figure 2 – Screen shot of Defendant offering of Accused Products and Services on Defendant webpage, as viewed at <https://soundcloud.com/pages/contact>, see Exhibit A.

17. Defendant has not sought or obtained a license for any of Blue Spike’s patented technologies. This creates a competitive disadvantage to other Companies, like Apple, Acer, Dell, IBM, Samsung, and Sony to name some large companies, who recognized the value and novelty Blue Spike’s patents provide to society.

18. Each count of patent infringement contained herein is accompanied by a representative claim. *See, Atlas IP LLC v. P. Gas and Electric Co.*, 15-CV-05469-EDL, 2016 WL 1719545, at *5 (N.D. Cal. Mar. 9, 2016) (“*Iqbal* and *Twombly* only require Plaintiff to state a plausible claim for relief, which can be satisfied by adequately pleading infringement of one claim.”).

COUNT 1:

INFRINGEMENT OF U.S. PATENT U.S. Patent 7,159,116 B2

19. Blue Spike incorporates by reference the paragraphs above and below.

20. The ’116 Patent is presumed valid, enforceable, and was duly and legally issued by the United States Patent and Trademark Office.

21. These claims are directed to a non-abstract improvement in computer functionality, rather than a method of organizing human activity or an idea of itself. *See Aatrix Software, Inc. v. Green Shades Software, Inc.*, 2017-1452 (Fed. Cir. Feb. 14, 2018).

22. The specification of the '116 Patent explains both the problem in the prior art and the benefit of the computer-implemented invention. This difference is not “well known” or “conventional.” A human cannot perform these tasks.

23. Without a license or permission from Blue Spike, Defendant has infringed and continues to infringe on one or more claims of the '116 Patent—directly, contributorily, or by inducement—by importing, making, using, offering for sale, or selling products and devices that embody the patented invention, including, without limitation, one or more of the Accused Products and Services, in violation of 35 U.S.C. § 271.

Direct Infringement.

24. Defendant makes, uses, offers for sale and sells in the U.S. the Accused Products and Services which practice all the elements of the '116 Patent. For instance, the Accused Products and Services infringe claim 14 of the '116 Patent which recites:

A device for conducting a trusted transaction between at least two parties who have agreed to transact, comprising:
means for uniquely identifying information selected from the group consisting of a unique identification of one of the parties, a unique identification of the transaction, a unique identification of value added information to be transacted, a unique identification of a value adding component;

1 a steganographic cipher for generating said unique
2 identification information, wherein the steganographic
3 cipher is governed by at least the following elements: a
4 predetermined key, a predetermined message, and a
5 predetermined carrier signal; and
6 a means for verifying an agreement to transact between the
7 parties.

8 25. Defendant makes, uses, offers for sale and sells in the U.S. the Accused Products
9 and Services which institute trusted transactions between at least two parties who
10 have agreed to transact.

11 **Indirect Infringement.**

12 26. Defendant has been and now is indirectly infringing by way of inducing
13 infringement by others and/or contributing to the infringement by others of the '116
14 Patent in this State, in this judicial district, and elsewhere in the United States, by,
15 among other things, making, using, importing, offering for sale, and/or selling,
16 without license or authority, infringing services for use in systems that fall within the
17 scope of one or more claims of the '116 Patent. Such products include, without
18 limitation, one or more of the Accused Products and Services. By making, using,
19 importing offering for sale, and/or selling such, Defendant injured Blue Spike and is
20 thus liable to Blue Spike for infringement of the '116 Patent under 35 U.S.C. § 271.

21 27. Defendant actively induces infringement under Title 35 U.S.C. § 271(b).
22 Defendant performed actions that induced infringing acts that Defendant knew or
23 should have known would induce actual infringements. *See Manville Sales Corp. v.*
24 *Paramount Sys., Inc.*, 917 F.2d 544, 553 (Fed.Cir.1990), quoted in *DSU Med. Corp. v.*
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26
27
28

1 *JMS Co.*, 471 F.3d 1293, 1306 (Fed.Cir.2006) (en banc in relevant part). “[A] finding
2 of inducement requires a threshold finding of direct infringement—either a finding of
3 specific instances of direct infringement or a finding that the accused products
4 necessarily infringe.” *Ricoh*, 550 F.3d at 1341 (citing *ACCO Brands, Inc. v. ABA Locks*
5 *Manufacturer Co.*, 501 F.3d 1307, 1313, (Fed. Cir. 2007).

6
7 28. Plaintiff will rely on direct and/or circumstantial evidence to prove the intent
8 element. *See Fuji Photo Film Co. v. Jazs Photo Corp.*, 394 F.3d 1368, 1377 (Fed. Cir.
9 2005) (“A patentee may prove intent through circumstantial evidence.”); *Water Techs.*
10 *Corp. v. Calco, Ltd.*, 850 F.2d 660, 668 (Fed. Cir. 1988) (“While proof of intent is
11 necessary, direct evidence is not required; rather, circumstantial evidence may
12 suffice.”).

13
14 29. Defendant took active steps to induce infringement, such as advertising an
15 infringing use, which supports a finding of an intention for the accused product to be
16 used in an infringing manner. *See Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd.*,
17 545 U.S. 913, 932, 125 S. Ct. 2764, 162 L. Ed. 2d 781 (2005) (explaining that the
18 contributory infringement doctrine “was devised to identify instances in which it may
19 be presumed from distribution of an article in commerce that the distributor intended
20 the article to be used to infringe another’s patent, and so may justly be held liable for
21 that infringement”).

22
23 30. It is not necessary for Plaintiff to indicate specific customers directly infringing
24 the Patents-in-Suit through the use of Defendant’s products and services. *See In re*
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1 *Bill of Lading Transmission and Processing System Pat. Litig.*, 681 F.3d 1323, 1336 (Fed.
2 Cir. 2012).

3 **Induced Infringement.**

4
5 31. Defendant induces infringement of its customers, who use the infringing
6 functionality, and its partners and resellers, who offer for sale and sell the Accused
7 Products and Services.
8

9 32. Defendant induces end users of the Accused Products and Services to infringe.
10 Defendant induces its customers to infringe at the very least by providing
11 information on how to access the Internet via its router system.
12

13 33. Defendant also provides customers other incentives to use the infringing
14 services, such as advertising. *See* Exhibit B; *see Power Integrations v. Semiconductor*, 843
15 F.3d at 1335 (“[W]e have affirmed induced infringement verdicts based on
16 circumstantial evidence of inducement (e.g., advertisements, user manuals) directed to
17 a class of direct infringers (e.g., customers, end users) without requiring hard proof
18 that any individual third-party direct infringer was actually persuaded to infringe by
19 that material.”).
20
21

22 34. Defendant had knowledge of the ’116 Patent at least as early as the service of
23 this complaint, and has known since then that the Accused Products and Services
24 infringe the Patents-in-Suit. Nevertheless, Defendant has continued to induce its
25 customers and partners to infringe. It does so through its instructions accompanying
26 the Accused Products and Services, its technical support, demonstrations and
27
28

1 tutorials. Thus, Defendant is liable for infringement of one or more claims of the '116
2 Patent by actively inducing infringement.

3 35. The Ninth Circuit has rejected the notion that a plaintiff must allege the facts
4 from which knowledge is to be inferred. *In re GlenFed, Inc. Sec. Litig.*, 42 F.3d 1541,
5 1545–47 (9th Cir. 1994), *superseded by statute on other grounds as recognized in Ronconi v.*
6 *Larkin*, 253 F.3d 423, 429 n.6 (9th Cir. 2001). Rather, it is sufficient to allege
7 knowledge or intent “generally, just as the rule states—that is, simply by saying that
8 [it] existed.” *Id.* at 1547.
9

10 **Contributory Infringement.**

11 36. Defendant is also a contributory infringer. In addition to proving an act of
12 direct infringement, plaintiff contends that defendant knew that the combination for
13 which its components were especially made was both patented and infringing.
14

15 37. The contributory infringement doctrine was devised to identify instances in
16 which it may be presumed from distribution of an article in commerce that the
17 distributor intended the article to be used to infringe another’s patent, and so may
18 justly be held liable for that infringement. *See Metro-Goldwyn-Mayer Studios Inc. v.*
19 *Grokster, Ltd.*, 545 U.S. 913, 932, 125 S. Ct. 2764, 162 L. Ed. 2d 781(2005).
20

21 38. Defendant contributed to the infringement by providing the Accused Products
22 and Services to its customers, partners and resellers.
23

24 39. The accused functionality in the Accused Products and Services has no
25 substantial non-infringing uses. *See, e.g., Lucent Techs., Inc. v. Gateway, Inc.*, 580 F. 3d
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1 1301 (Fed. Cir. 2009) (holding that the substantial non-infringing uses element of a
2 contributory infringement claim applies to an infringing feature or component). An
3 “infringing feature” of a product does not escape liability simply because the product
4 as a whole has other non-infringing uses. *See id.* at 1321.

6 **Plaintiff Suffered Damages.**

7
8 40. Defendant’s acts of infringement of the ’116 Patent have caused damage to Blue
9 Spike, and Blue Spike is entitled to recover from Defendant the damages sustained as
10 a result of Defendant’s wrongful acts in an amount described in the prayer below.
11 Defendant’s infringement of Blue Spike’s exclusive rights under the ’116 Patent will
12 continue to damage Blue Spike, causing it irreparable harm, for which there is no
13 adequate remedy at law, warranting an injunction from the Court.
14

15
16 41. On information and belief, the infringement of the ’116 Patent by Defendant has
17 been willful and continues to be willful. Defendant had knowledge of the ’116 Patent,
18 including but not limited to at least one or more of the following events:

- 19
20 a. The filing of Blue Spike’s complaint against Defendant.
21 b. In the course of its due diligence and freedom to operate analyses.
22 c. News coverage of Blue Spike’s enforcement of this patent against other
23 infringers.
24

25 42. On information and belief, Defendant has had at least had constructive notice of
26 the ’116 Patent by operation of law. Plaintiff believes the evidence provided shows
27 Defendant’s willful infringement is egregious. Even so, Plaintiff is not required to
28

1 prove egregiousness in its pleadings. “Even after Halo, broader allegations of
2 willfulness, without a specific showing of egregiousness, are sufficient to withstand a
3 motion to dismiss.” *Shire ViroPharma Inc. v. CSL Behring LLC*, CV 17-414, 2018 WL
4 326406, at *3 (D. Del. Jan. 8, 2018) (denying a defendant’s motion to dismiss and
5 noting “Defendants’ argument seems to conflate the standards for pleading willful
6 infringement with the standards for proving willful infringement.”).

7
8
9 43. A jury is capable, and indeed required, to examine facts that plausibly support a
10 finding of willful infringement. Here, the facts provide “a sufficient predicate” to
11 support a jury’s finding of willfulness. *See Barry v. Medtronic, Inc.*, 250 F. Supp. 3d 107,
12 111 (E.D. Tex. 2017) (listing a series of nine-factors utilized in the Federal Circuit,
13 including whether the infringer knew of the other’s patent protection and
14 investigated, the infringers behavior, defendant’s size and financial condition,
15 closeness of the case, duration of misconduct, and remedial action taken by defendant
16 once it was notified of infringement, as factors that are “a sufficient predicate” of fact
17 to support a jury’s finding of willfulness).

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21 44. The Ninth Circuit has rejected the notion that a plaintiff must allege the facts
22 from which knowledge is to be inferred. *In re GlenFed, Inc. Sec. Litig.*, 42 F.3d 1541,
23 1545–47 (9th Cir. 1994), *superseded by statute on other grounds as recognized in Ronconi v.*
24 *Larkin*, 253 F.3d 423, 429 n.6 (9th Cir. 2001). Rather, it is sufficient to allege
25 knowledge or intent “generally, just as the rule states—that is, simply by saying that
26 [it] existed.” *Id.* at 1547.
27
28

COUNT 2:**INFRINGEMENT OF U.S. PATENT US Patent 8,538,011 B2**

45. Blue Spike incorporates by reference the paragraphs above and below.

46. The '011 Patent is presumed valid, enforceable, and was duly and legally issued by the United States Patent and Trademark Office.

47. These claims are directed to a non-abstract improvement in computer functionality, rather than a method of organizing human activity or an idea of itself. *See Aatrix Software, Inc. v. Green Shades Software, Inc.*, 2017-1452 (Fed. Cir. Feb. 14, 2018).

48. The specification of the '011 Patent explains both the problem in the prior art and the benefit of the computer-implemented invention. This difference is not “well known” or “conventional.” A human cannot perform these tasks.

49. Without a license or permission from Blue Spike, Defendant has infringed and continues to infringe on one or more claims of the '011 Patent—directly, contributorily, or by inducement—by importing, making, using, offering for sale, or selling products and devices that embody the patented invention, including, without limitation, one or more of the Accused Products and Services, in violation of 35 U.S.C. § 271.

Direct Infringement.

50. Defendant makes, uses, offers for sale and sells in the U.S. the Accused Products and Services which practice all the elements of the '011 Patent. For instance, the Accused Products and Services infringe claim 35 of the '011 Patent which recites:

1 A device for conducting trusted transactions between at
2 least two parties, comprising:
3 a steganographic cipher;
4 a controller for receiving input data or outputting output
5 data; and
6 at least one input/output connection,
7 wherein the device has a device identification code stored in
8 the device;
9 an analog to digital converter; and
10 a steganographically ciphered software application;
11 wherein said steganographically ciphered software
12 application has been subject to a steganographic cipher for
13 serialization;
14 wherein said steganographic cipher receives said output
15 data, steganographically ciphering said output data using a
16 key, to define steganographically ciphered output data, and
17 transmits said steganographically ciphered output data to
18 said at least one input/output connection;
19 wherein the device is configured to steganographically
20 cipher both value-added information and at least one value-
21 added component associated with the value-added
22 information.

23 51. Defendant makes, uses, offers for sale and sells in the U.S. the Accused Products
24 and Services which institute trusted transactions between at least two parties who
25 have agreed to transact.

26 **Indirect Infringement.**

27 52. Defendant has been and now is indirectly infringing by way of inducing
28 infringement by others and/or contributing to the infringement by others of the '011
Patent in this State, in this judicial district, and elsewhere in the United States, by,
among other things, making, using, importing, offering for sale, and/or selling,
without license or authority, infringing services for use in systems that fall within the
scope of one or more claims of the '011 Patent. Such products include, without

1 limitation, one or more of the Accused Products and Services. By making, using,
2 importing offering for sale, and/or selling such, Defendant injured Blue Spike and is
3 thus liable to Blue Spike for infringement of the '011 Patent under 35 U.S.C. § 271.
4

5 53. Defendant actively induces infringement under Title 35 U.S.C. § 271(b).
6 Defendant performed actions that induced infringing acts that Defendant knew or
7 should have known would induce actual infringements. *See Manville Sales Corp. v.*
8 *Paramount Sys., Inc.*, 917 F.2d 544, 553 (Fed.Cir.1990), quoted in *DSU Med. Corp. v.*
9 *JMS Co.*, 471 F.3d 1293, 1306 (Fed.Cir.2006) (en banc in relevant part). “[A] finding
10 of inducement requires a threshold finding of direct infringement—either a finding of
11 specific instances of direct infringement or a finding that the accused products
12 necessarily infringe.” *Ricoh*, 550 F.3d at 1341 (citing *ACCO Brands, Inc. v. ABA Locks*
13 *Manufacturer Co.*, 501 F.3d 1307, 1313, (Fed. Cir. 2007).
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16

17 54. Plaintiff will rely on direct and/or circumstantial evidence to prove the intent
18 element. *See Fuji Photo Film Co. v. Jazz Photo Corp.*, 394 F.3d 1368, 1377 (Fed. Cir.
19 2005) (“A patentee may prove intent through circumstantial evidence.”); *Water Techs.*
20 *Corp. v. Calco, Ltd.*, 850 F.2d 660, 668 (Fed. Cir. 1988) (“While proof of intent is
21 necessary, direct evidence is not required; rather, circumstantial evidence may
22 suffice.”).
23
24

25 55. Defendant took active steps to induce infringement, such as advertising an
26 infringing use, which supports a finding of an intention for the accused product to be
27 used in an infringing manner. *See Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd.*,
28

1 545 U.S. 913, 932, 125 S. Ct. 2764, 162 L. Ed. 2d 781 (2005) (explaining that the
2 contributory infringement doctrine “was devised to identify instances in which it may
3 be presumed from distribution of an article in commerce that the distributor intended
4 the article to be used to infringe another’s patent, and so may justly be held liable for
5 that infringement”).

6
7
8 56. It is not necessary for Plaintiff to indicate specific customers directly infringing
9 the Patents-in-Suit through the use of Defendant’s products and services. *See In re*
10 *Bill of Lading Transmission and Processing System Pat. Litig.*, 681 F.3d 1323, 1336 (Fed.
11 Cir. 2012).

12 **Induced Infringement.**

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14 57. Defendant induces infringement of its customers, who use the infringing
15 functionality, and its partners and resellers, who offer for sale and sell the Accused
16 Products and Services.

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18 58. Defendant induces end users of the Accused Products and Services to infringe.
19 Defendant induces its customers to infringe at the very least by providing
20 information on how to access the Internet via its router system.

21
22 59. Defendant also provides customers other incentives to use the infringing
23 services, such as advertising. *See Exhibit A; see Power Integrations v. Fairchild*
24 *Semiconductor*, 843 F.3d at 1335 (“[W]e have affirmed induced infringement verdicts
25 based on circumstantial evidence of inducement (e.g., advertisements, user manuals)
26 directed to a class of direct infringers (e.g., customers, end users) without requiring
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1 hard proof that any individual third-party direct infringer was actually persuaded to
2 infringe by that material.”).

3
4 60. Defendant had knowledge of the '011 Patent at least as early as the service of
5 this complaint, and has known since then that the Accused Products and Services
6 infringe the Patents-in-Suit. Nevertheless, Defendant has continued to induce its
7 customers and partners to infringe. It does so through its instructions accompanying
8 the Accused Products and Services, its technical support, demonstrations and
9 tutorials. Thus, Defendant is liable for infringement of one or more claims of the '011
10 Patent by actively inducing infringement.
11

12
13 61. The Ninth Circuit has rejected the notion that a plaintiff must allege the facts
14 from which knowledge is to be inferred. *In re GlenFed, Inc. Sec. Litig.*, 42 F.3d 1541,
15 1545–47 (9th Cir. 1994), *superseded by statute on other grounds as recognized in Ronconi v.*
16 *Larkin*, 253 F.3d 423, 429 n.6 (9th Cir. 2001). Rather, it is sufficient to allege
17 knowledge or intent “generally, just as the rule states—that is, simply by saying that
18 [it] existed.” *Id.* at 1547.
19

20 **Contributory Infringement.**

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22 62. Defendant is also a contributory infringer. In addition to proving an act of
23 direct infringement, plaintiff contends that defendant knew that the combination for
24 which its components were especially made was both patented and infringing.
25

26 63. The contributory infringement doctrine was devised to identify instances in
27 which it may be presumed from distribution of an article in commerce that the
28

1 distributor intended the article to be used to infringe another's patent, and so may
2 justly be held liable for that infringement. *See Metro-Goldwyn-Mayer Studios Inc. v.*
3 *Grokster, Ltd.*, 545 U.S. 913, 932, 125 S. Ct. 2764, 162 L. Ed. 2d 781(2005).

4
5 64. Defendant contributed to the infringement by providing the Accused Products
6 and Services to its customers, partners and resellers.

7
8 65. The accused functionality in the Accused Products and Services has no
9 substantial non-infringing uses. *See, e.g., Lucent Techs., Inc. v. Gateway, Inc.*, 580 F. 3d
10 1301 (Fed. Cir. 2009) (holding that the substantial non-infringing uses element of a
11 contributory infringement claim applies to an infringing feature or component). An
12 "infringing feature" of a product does not escape liability simply because the product
13 as a whole has other non-infringing uses. *See id.* at 1321.

14
15 **Plaintiff Suffered Damages.**

16
17 66. Defendant's acts of infringement of the '011 Patent have caused damage to Blue
18 Spike, and Blue Spike is entitled to recover from Defendant the damages sustained as
19 a result of Defendant's wrongful acts in an amount described in the prayer below.
20 Defendant's infringement of Blue Spike's exclusive rights under the '011 Patent will
21 continue to damage Blue Spike, causing it irreparable harm, for which there is no
22 adequate remedy at law, warranting an injunction from the Court.

23
24
25 67. On information and belief, the infringement of the '011 Patent by Defendant has
26 been willful and continues to be willful. Defendant had knowledge of the '011 Patent,
27 including but not limited to at least one or more of the following events:
28

- a. The filing of Blue Spike's complaint against Defendant.
- b. In the course of its due diligence and freedom to operate analyses.
- c. News coverage of Blue Spike's enforcement of this patent against other infringers.

68. On information and belief, Defendant has had at least had constructive notice of the '011 Patent by operation of law. Plaintiff believes the evidence provided shows Defendant's willful infringement is egregious. Even so, Plaintiff is not required to prove egregiousness in its pleadings. "Even after Halo, broader allegations of willfulness, without a specific showing of egregiousness, are sufficient to withstand a motion to dismiss." *Shire ViroPharma Inc. v. CSL Behring LLC*, CV 17-414, 2018 WL 326406, at *3 (D. Del. Jan. 8, 2018) (denying a defendant's motion to dismiss and noting "Defendants' argument seems to conflate the standards for pleading willful infringement with the standards for proving willful infringement.").

69. A jury is capable, and indeed required, to examine facts that plausibly support a finding of willful infringement. Here, the facts provide "a sufficient predicate" to support a jury's finding of willfulness. *See Barry v. Medtronic, Inc.*, 250 F. Supp. 3d 107, 111 (E.D. Tex. 2017) (listing a series of nine-factors utilized in the Federal Circuit, including whether the infringer knew of the other's patent protection and investigated, the infringers behavior, defendant's size and financial condition, closeness of the case, duration of misconduct, and remedial action taken by defendant

1 once it was notified of infringement, as factors that are “a sufficient predicate” of fact
2 to support a jury’s finding of willfulness).

3 70. The Ninth Circuit has rejected the notion that a plaintiff must allege the facts
4 from which knowledge is to be inferred. *In re GlenFed, Inc. Sec. Litig.*, 42 F.3d 1541,
5 1545–47 (9th Cir. 1994), *superseded by statute on other grounds as recognized in Ronconi v.*
6 *Larkin*, 253 F.3d 423, 429 n.6 (9th Cir. 2001). Rather, it is sufficient to allege
7 knowledge or intent “generally, just as the rule states—that is, simply by saying that
8 [it] existed.” *Id.* at 1547.
9

10
11 **COUNT 3:**

12 **INFRINGEMENT OF U.S. PATENT NO. 7,813,506 B2**

13
14 71. Blue Spike incorporates by reference the paragraphs above and below.

15 72. The ’506 Patent is presumed valid, enforceable, and was duly and legally issued
16 by the United States Patent and Trademark Office.

17
18 73. These claims are directed to a non-abstract improvement in computer
19 functionality, rather than a method of organizing human activity or an idea of itself.
20 *See Aatrix Software, Inc. v. Green Shades Software, Inc.*, 2017-1452 (Fed. Cir. Feb. 14,
21 2018).
22

23 74. The specification of the ’506 Patent explains both the problem in the prior art
24 and the benefit of the computer-implemented invention. This difference is not “well
25 known” or “conventional.” A human cannot perform these tasks.
26

27 75. Without a license or permission from Blue Spike, Defendant has infringed and
28 continues to infringe on one or more claims of the ’506 Patent—directly,

1 contributorily, or by inducement—by importing, making, using, offering for sale, or
2 selling products and devices that embody the patented invention, including, without
3 limitation, one or more of the Accused Products and Services, in violation of 35
4 U.S.C. § 271.

6 **Direct Infringement.**

7
8 76. Defendant makes, uses, offers for sale and sells in the U.S. the Accused Products
9 and Services which practice all the elements of the '506 Patent. For instance, the
10 Accused Products and Services infringe claim 6 of the '506 Patent which recites:

11
12 A method for distributing accessible digital content,
13 comprising:
14 providing a digital content comprising digital data and file
15 format information;
16 selecting a scrambling technique to apply to the digital
17 content;
18 scrambling the digital content using a predetermined key
19 resulting in perceptibly degraded digital content wherein
20 the scrambling technique is based on a plurality of
21 predetermined criteria including at least the criteria of
22 reaching a desired signal quality level for the digital
23 content; and
24 distributing the scrambled digital content.

25
26 77. Defendant makes, uses, offers for sale and sells in the U.S. the Accused Products
27 and Services which institute systems and processes for distributing digital content
28 incorporating scrambling techniques.

25 **Indirect Infringement.**

26
27 78. Defendant has been and now is indirectly infringing by way of inducing
28 infringement by others and/or contributing to the infringement by others of the '506

1 Patent in this State, in this judicial district, and elsewhere in the United States, by,
2 among other things, making, using, importing, offering for sale, and/or selling,
3 without license or authority, infringing services for use in systems that fall within the
4 scope of one or more claims of the '506 Patent. Such products include, without
5 limitation, one or more of the Accused Products and Services. By making, using,
6 importing offering for sale, and/or selling such, Defendant injured Blue Spike and is
7 thus liable to Blue Spike for infringement of the '011 Patent under 35 U.S.C. § 271.
8

9 79. Defendant actively induces infringement under Title 35 U.S.C. § 271(b).
10 Defendant performed actions that induced infringing acts that Defendant knew or
11 should have known would induce actual infringements. *See Manville Sales Corp. v.*
12 *Paramount Sys., Inc.*, 917 F.2d 544, 553 (Fed.Cir.1990), quoted in *DSU Med. Corp. v.*
13 *JMS Co.*, 471 F.3d 1293, 1306 (Fed.Cir.2006) (en banc in relevant part). “[A] finding
14 of inducement requires a threshold finding of direct infringement—either a finding of
15 specific instances of direct infringement or a finding that the accused products
16 necessarily infringe.” *Ricoh*, 550 F.3d at 1341 (citing *ACCO Brands, Inc. v. ABA Locks*
17 *Manufacturer Co.*, 501 F.3d 1307, 1313, (Fed. Cir. 2007).
18

19 80. Plaintiff will rely on direct and/or circumstantial evidence to prove the intent
20 element. *See Fuji Photo Film Co. v. Jazz Photo Corp.*, 394 F.3d 1368, 1377 (Fed. Cir.
21 2005) (“A patentee may prove intent through circumstantial evidence.”); *Water Techs.*
22 *Corp. v. Calco, Ltd.*, 850 F.2d 660, 668 (Fed. Cir. 1988) (“While proof of intent is
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1 necessary, direct evidence is not required; rather, circumstantial evidence may
2 suffice.”).

3
4 81. Defendant took active steps to induce infringement, such as advertising an
5 infringing use, which supports a finding of an intention for the accused product to be
6 used in an infringing manner. *See Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd.*,
7 545 U.S. 913, 932, 125 S. Ct. 2764, 162 L. Ed. 2d 781 (2005) (explaining that the
8 contributory infringement doctrine “was devised to identify instances in which it may
9 be presumed from distribution of an article in commerce that the distributor intended
10 the article to be used to infringe another’s patent, and so may justly be held liable for
11 that infringement”).
12
13

14 82. It is not necessary for Plaintiff to indicate specific customers directly infringing
15 the Patents-in-Suit through the use of Defendant’s products and services. *See In re*
16 *Bill of Lading Transmission and Processing System Pat. Litig.*, 681 F.3d 1323, 1336 (Fed.
17 Cir. 2012).
18

19
20 **Induced Infringement.**

21 83. Defendant induces infringement of its customers, who use the infringing
22 functionality, and its partners and resellers, who offer for sale and sell the Accused
23 Products and Services.
24

25 84. Defendant induces end users of the Accused Products and Services to infringe.
26 Defendant induces its customers to infringe at the very least by providing
27 information on how to access the Internet via its router system.
28

1 85. Defendant also provides customers other incentives to use the infringing
2 services, such as advertising. *See* Exhibit B; *see Power Integrations v. Fairchild*
3 *Semiconductor*, 843 F.3d at 1335 (“[W]e have affirmed induced infringement verdicts
4 based on circumstantial evidence of inducement (e.g., advertisements, user manuals)
5 directed to a class of direct infringers (e.g., customers, end users) without requiring
6 hard proof that any individual third-party direct infringer was actually persuaded to
7 infringe by that material.”).

10 86. Defendant had knowledge of the ’506 Patent at least as early as the service of
11 this complaint, and has known since then that the Accused Products and Services
12 infringe the Patents-in-Suit. Nevertheless, Defendant has continued to induce its
13 customers and partners to infringe. It does so through its instructions accompanying
14 the Accused Products and Services, its technical support, demonstrations and
15 tutorials. Thus, Defendant is liable for infringement of one or more claims of the ’506
16 Patent by actively inducing infringement.

19 87. The Ninth Circuit has rejected the notion that a plaintiff must allege the facts
20 from which knowledge is to be inferred. *In re GlenFed, Inc. Sec. Litig.*, 42 F.3d 1541,
21 1545–47 (9th Cir. 1994), *superseded by statute on other grounds as recognized in Ronconi v.*
22 *Larkin*, 253 F.3d 423, 429 n.6 (9th Cir. 2001). Rather, it is sufficient to allege
23 knowledge or intent “generally, just as the rule states—that is, simply by saying that
24 [it] existed.” *Id.* at 1547.

Contributory Infringement.

88. Defendant is also a contributory infringer. In addition to proving an act of direct infringement, plaintiff contends that defendant knew that the combination for which its components were especially made was both patented and infringing.

89. The contributory infringement doctrine was devised to identify instances in which it may be presumed from distribution of an article in commerce that the distributor intended the article to be used to infringe another's patent, and so may justly be held liable for that infringement. *See Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd.*, 545 U.S. 913, 932, 125 S. Ct. 2764, 162 L. Ed. 2d 781(2005).

90. Defendant contributed to the infringement by providing the Accused Products and Services to its customers, partners and resellers.

91. The accused functionality in the Accused Products and Services has no substantial non-infringing uses. *See, e.g., Lucent Techs., Inc. v. Gateway, Inc.*, 580 F. 3d 1301 (Fed. Cir. 2009) (holding that the substantial non-infringing uses element of a contributory infringement claim applies to an infringing feature or component). An "infringing feature" of a product does not escape liability simply because the product as a whole has other non-infringing uses. *See id.* at 1321.

Plaintiff Suffered Damages.

92. Defendant's acts of infringement of the '506 Patent have caused damage to Blue Spike, and Blue Spike is entitled to recover from Defendant the damages sustained as a result of Defendant's wrongful acts in an amount described in the prayer below.

1 Defendant's infringement of Blue Spike's exclusive rights under the '506 Patent will
2 continue to damage Blue Spike, causing it irreparable harm, for which there is no
3 adequate remedy at law, warranting an injunction from the Court.
4

5 93. On information and belief, the infringement of the '506 Patent by Defendant has
6 been willful and continues to be willful. Defendant had knowledge of the '506 Patent,
7 including but not limited to at least one or more of the following events:
8

9 a. The filing of Blue Spike's complaint against Defendant.

10 b. In the course of its due diligence and freedom to operate analyses.

11 c. News coverage of Blue Spike's enforcement of this patent against other
12 infringers.
13

14 94. On information and belief, Defendant has had at least had constructive notice
15 of the '506 Patent by operation of law. Plaintiff believes the evidence provided shows
16 Defendant's willful infringement is egregious. Even so, Plaintiff is not required to
17 prove egregiousness in its pleadings. "Even after Halo, broader allegations of
18 willfulness, without a specific showing of egregiousness, are sufficient to withstand a
19 motion to dismiss." *Shire ViroPharma Inc. v. CSL Behring LLC*, CV 17-414, 2018 WL
20 326406, at *3 (D. Del. Jan. 8, 2018) (denying a defendant's motion to dismiss and
21 noting "Defendants' argument seems to conflate the standards for pleading willful
22 infringement with the standards for proving willful infringement.>").
23
24
25

26 95. A jury is capable, and indeed required, to examine facts that plausibly support a
27 finding of willful infringement. Here, the facts provide "a sufficient predicate" to
28

1 support a jury's finding of willfulness. *See Barry v. Medtronic, Inc.*, 250 F. Supp. 3d 107,
2 111 (E.D. Tex. 2017) (listing a series of nine-factors utilized in the Federal Circuit,
3 including whether the infringer knew of the other's patent protection and
4 investigated, the infringers behavior, defendant's size and financial condition,
5 closeness of the case, duration of misconduct, and remedial action taken by defendant
6 once it was notified of infringement, as factors that are "a sufficient predicate" of fact
7 to support a jury's finding of willfulness).
8

9
10 96. The Ninth Circuit has rejected the notion that a plaintiff must allege the facts
11 from which knowledge is to be inferred. *In re GlenFed, Inc. Sec. Litig.*, 42 F.3d 1541,
12 1545–47 (9th Cir. 1994), *superseded by statute on other grounds as recognized in Ronconi v.*
13 *Larkin*, 253 F.3d 423, 429 n.6 (9th Cir. 2001). Rather, it is sufficient to allege
14 knowledge or intent "generally, just as the rule states—that is, simply by saying that
15 [it] existed." *Id.* at 1547.
16
17

18 REQUEST FOR RELIEF

19 Blue Spike incorporates each of the allegations in the paragraphs above and
20 respectfully asks the Court to:
21

22 (a) enter a judgment that Defendant has directly infringed, contributorily
23 infringed, and/or induced infringement of one or more claims of each of the Patents-
24 in-Suit in the amount of reasonable royalty based on revenue of accused product and
25 service of at least \$40 million, and more if damages are trebled;
26
27
28

(b) enter a judgment awarding Blue Spike all damages adequate to compensate it for Defendant's infringement of, direct or contributory, or inducement to infringe, the Patents-in-Suit, including all pre-judgment and post-judgment interest at the maximum rate permitted by law;

(c) enter a judgment awarding treble damages pursuant to 35 U.S.C. § 284 for Defendant's willful infringement of one or more of the Patents-in-Suit;

(d) issue a preliminary injunction and thereafter a permanent injunction enjoining and restraining Defendant, its directors, officers, agents, servants, employees, and those acting in privity or in concert with them, and their subsidiaries, divisions, successors, and assigns, from further acts of infringement, contributory infringement, or inducement of infringement of the Patents-in-Suit;

(e) enter a judgment requiring Defendant to pay the costs of this action, including all disbursements, and attorneys' fees as provided by 35 U.S.C. § 285, together with prejudgment interest; and

(f) award Blue Spike all other relief that the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Blue Spike demands a jury trial on all issues that may be determined by a jury.

Respectfully submitted,

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Counsel for Blue Spike LLC

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, this document was served on all counsel deemed to have consented to electronic service. Local Rule CV-5(a)(3)(A). Pursuant to Federal Rule of Civil Procedure 5(d) and Local Rule CV-5(d) and (e), all other counsel of record not deemed to have consented to electronic service were served with a true and correct copy of the foregoing by email, on this date stamped above.

/s/ Randall Garteiser

GARTEISER HONEA – TRIAL ATTORNEYS